

**PUBLIC CHAPTER NO. 871**

**HOUSE BILL NO. 3508**

**By Representatives Ulysses Jones, Hardaway, Cooper**

**Substituted for: Senate Bill No. 3131**

**By Senators Burchett, Woodson**

AN ACT to amend Tennessee Code Annotated, Section 5-1-104 and Title 5, Chapter 5, Part 1, relative to the election of county officers and filling of vacancies by county legislative bodies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 5-1-104 is amended by adding the following language to the end of subdivision (b)(1):

The county legislative body shall be required to make an appointment to fill a vacancy within one hundred and twenty (120) days of receiving notice of the vacancy unless during that time period there is a general election scheduled in the county and there is sufficient time for the vacancy to be placed on the ballot in accordance with this section. Any appointment to fill a vacancy by the county legislative body shall be made in accordance with title 5, chapter 5, part 1. The provisions of this subdivision shall not apply to any county which has a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census. The provisions of this subdivision shall not apply in any county having a population of not less than 897,400 nor more than 897,500 according to the 2000 federal census or any subsequent federal census.

SECTION 2. Tennessee Code Annotated, Section 5-5-102 is amended by deleting subdivision (c)(3).

SECTION 3. Tennessee Code Annotated, Section 5-5-111 is amended by deleting the section in its entirety and substituting instead the following:

(a)

(1) Whenever an office is required to be filled, or a vacancy occurs in any office required to be filled, by the county legislative body, the county clerk shall provide notice to every member of the county legislative body of the need to fill the office or vacancy. If the office of county clerk is vacant, such notice shall be provided by the county clerk's deputy. If, in addition,

there is no deputy county clerk, notice shall be provided by the acting chair of the county legislative body. In accordance with § 8-48-108, the formal notice to members required by this subdivision (a)(1) is directory and may be waived by the members of the county legislative body if all members have constructive notice of the vacancy or opening through other sources of information.

(2) In addition to the notice provided for in subdivision (a)(1), the presiding officer of the county legislative body shall cause public notice to be given in a newspaper of general circulation in the county at least seven (7) days prior to the meeting of the body at which the office is to be filled, notifying the public of the vacancy or opening and specifying the office or offices to be filled at the meeting.

(b) Before the county legislative body votes or considers any motion or resolution regarding the position to be filled, the chair shall allow registered voters of the county an opportunity to submit names to the county legislative body for consideration. Such names may be submitted in writing to the chair prior to the meeting or may be submitted in person at the meeting. In order for a name to be considered, a member of the county legislative body must subsequently nominate the person. Members of the county legislative body may also nominate a candidate or candidates to fill the office or vacancy without such name being submitted by a voter. Nominations do not require a second. If the person nominated is not present at the meeting, the person making the nomination shall submit a signed statement from the nominee that the nominee is willing to serve in the position if appointed.

(c) Should a member of the county legislative body accept a nomination for a position or vacancy to be filled by the county legislative body, the member shall be prohibited from voting on the appointment or any motions or resolutions relative to making the appointment until the position is filled. For the purposes of determining a majority, the membership of the county legislative body shall be reduced to reflect any member or members prohibited from voting on the appointment. If a member of the county legislative body is subsequently appointed to the position such member shall immediately resign from the county legislative body upon accepting the appointment. If the member does not receive the appointment, the member shall not be required to resign and may continue the member's duties on the county legislative body upon the conclusion of the vote on the appointment.

(d) After nominations cease, the county legislative body may discuss the nominations and may, at the discretion of the chair, interview nominees or allow nominees the opportunity to address the county legislative body. Upon motion passed by the majority of the members, the vote to make the appointment may be postponed to a subsequent meeting, provided that adequate public notice of the meeting is given in accordance with title 8, chapter 44.

(e) To receive an appointment, a nominee must receive the votes of a majority of the members of the county legislative body eligible to vote on the appointment. The county legislative body shall adopt rules of procedure for eliminating nominees in cases where there are multiple nominees for an appointment and no nominee receives a majority of the votes after the initial vote. No secret balloting shall be permitted. Each member's vote regarding the appointment process shall be recorded by the clerk and entered on the minutes of the county legislative body. A tie vote of the county legislative body regarding an appointment may be broken in the same manner that other tie votes of the body may be broken.

(f) Any complaint challenging the legality of an appointment made by the county legislative body shall be filed with the chancery court of the county within ten (10) days of the date of the appointment.

(g) When filling a vacancy in offices required to be filled by the county legislative body, the county legislative body shall fill such vacancy in accordance with the deadline provided in § 5-1-104.

(h) This section shall not apply to any county which has a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census.

(i) This section shall not apply to any county having a population of not less than 897,400 nor more than 897,500 according to the 2000 federal census or any subsequent federal census.

SECTION 4. Tennessee Code Annotated, Sections 5-5-112 through 5-5-117 are amended by deleting the sections in their entirety.

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it.

**PASSED: April 21, 2008**

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

  
RON RAMSEY, SPEAKER  
SENATE OF THE SENATE

**APPROVED this 6th day of May 2008**



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PHIL BREDESEN, GOVERNOR